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No. 09-539

Supreme Court, U.S.
FILED
FEB 26 2010
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IN THE SUPREME COURT OF THE UNITED STATES

VICTOR HUGO CARDONA-LOPEZ,
Petitioner,
v.
ERIC H. HOLDER, JR., U.S. ATTORNEY GENERAL,
Respondent,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S REPLY

The Law Office of Roberto M. Hinojosa
ROBERTO M. HINOJOSA
Texas State Bar Number: 24043730
2020 Southwest Fwy. (U.S. 59) Ste. 222
Houston, Texas 77098
Telephone: (713) 665-5060
Fax: (713) 528-0620
E-mail: attorneyrmh@yahoo.com

Counsel for Petitioner

PETITIONER'S REPLY

In the "Brief for the Respondent", the Government suggest that this court hold the petition for a writ of certiorari in this case pending its decision in *Carachuri-Rosendo*. (Brief Res. 5). This is a mere suggestion upon the Court. Another alternative at the Court's discretion would be for the Court to Grant the petition for a writ of certiorari and hear this case along with the *Carachuri-Rosendo*. The Court has different options at its discretion. However, the Government also states that Petitioner suggested in passing that "treating a second or successive drug possession conviction as an aggravated felony would violate various provisions of the Constitution". (Brief Res. 5-6). Petitioner's argument is that treating a second or successive State drug possession conviction as an aggravated felony without providing the protections afforded by Federal law would violate various Constitutional provisions, among others the Fifth and Sixth amendments. But this is not an in passing argument. The argument was raised for the very first time before the Immigration Judge at the Removal hearing. As

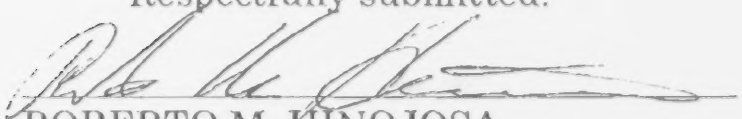
pointed out by the Immigration Judge in his Removal Order. (Pet. App. 12a-14a). The BIA did not state that such Constitutional arguments were not raised before that Court. (Pet. App. 4a-10a). The arguments of Constitutional dimensions were made. Neither the Immigration Judge nor the Board of Immigration Appeals in general consider Constitutional arguments. Such arguments were nonetheless raised. The government itself concedes that in the petition for review presented before the Court of Appeals, by Petitioner, several constitutional provisions were raised. (Brief Res. 5-6). It is absolutely meritless to say that because the Fifth Circuit decided to Grant the Government's Motion for Summary Affirmance Petitioner waives his Constitutional arguments. The Respondent further says that the Government's motion for summary affirmance, which was granted by the Fifth Circuit, was unopposed. (Brief Res. 5). While it is true that Petitioner did not file a reply to the Government's Motion for summary affirmance, such fact does not mean that the motion was unopposed. If the motion was to have been unopposed such fact would have probably been reflected in the title of the motion. Furthermore, the Respondent refers to a Petition and a Motion that were filed before the Fifth Circuit which, as far as counsel for petitioner

knows, have not been introduced before this Court for consideration. The Respondent further argues that the Constitutional arguments raised by Petitioner are without merit. (Brief Res. 5-6). Petitioner's Constitutional arguments are meritorious and in the minds of everyone interested in what the Founding Fathers established as a guide for the future of this Country. The argument of Respondent defeats itself in that it demonstrates that petitioner did not waive his Constitutional concerns. The Government concedes that Petitioner raises the Constitutional issues before the Fifth Circuit and the record reflects that the constitutional issues were even raised before the Immigration Judge. Furthermore, if the Government wants to argue before the Court that Petitioner waived his constitutional rights because it raised them before the Fifth Circuit but then did not follow through it must, at the very least, present the actual documents it purports to establish the facts as they argue them. Petitioner has presented legitimate constitutional issues before this Court. The record does not reflect that Petitioner waived the Constitutional issues it has argued since the hearing before the Immigration Judge. The Fifth Circuit decided to grant the governments Motion for Summary Affirmance but that fact in and of itself does not

support the government's position. The fact that the government presents no authority to support its belief that the Constitutional issues raised by Petitioner are without merit is an indication that the Governments' argument is at best weak.

In light of the inability of the Government to present any authority in support of its arguments it is clear that the Constitutional issues made by Petitioner are with merit and should be considered. Petitioner suggests that this honorable Court consider all arguments raised and that the Petition for a Writ of Certiorari be granted.

Respectfully submitted.



ROBERTO M. HINOJOSA
Texas State Bar Number: 24043730
2020 Southwest Fwy. (U.S. 59) Ste. 222
Houston, Texas 77098
Telephone: (713) 665-5060
Fax: (713) 528-0620
Attorney for the Petitioner,
Victor Hugo Cardona-Lopez

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